PERBADANAN KEMAJUAN NEGERI SELANGOR PETALING JAYA, SELANGOR DARUL EHSAN & ORS

v.

PERUMAL MANIKAM

COURT OF APPEAL, KUALA LUMPUR
NH CHAN JCA
ABDUL MALEK AHMAD JCA
HAIDAR MOHD NOOR JCA
[CIVIL APPEAL NO: B-02-164-1998]
14 APRIL 1999

ADMINISTRATIVE LAW: *Public servants - Dismissal from service - Disciplinary proceedings - Whether disciplinary authority took into account matters of which appellant had no notice - Whether in breach of procedural fairness - Whether dismissal invalid*

The respondent was employed by the first appellant as an engine fitter. In 1989 allegations were made that the respondent had stolen five tanks of petrol belonging to his employer, and disciplinary proceedings were convened against the respondent pursuant to the provisions of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 ('the 1980 General Orders'). In consequence, the Disciplinary Board, the second appellant, found the respondent guilty of the charges and dismissed the respondent from service *vide* letter dated 10 January 1990. The dismissal was made under General Order 36(g) of the 1980 General Orders, though that General Order dealt not with dismissal but with reduction in salary.

Subsequently, by letter dated 7 March 1990, the Disciplinary Appeal Board, the third appellant, set aside the order of dismissal and ordered for a fresh disciplinary inquiry against the respondent. At the inquiry that followed, the respondent made a written representation to the Disciplinary Board, but that notwithstanding, the Disciplinary Board found the respondent guilty of the charges and dismissed him from service with effect from 22 February 1991, also pursuant to General Order 36(g) of the 1980 General Orders.

The facts showed that the Disciplinary Board, in dismissing the respondent for the second time, had considered not only the respondent's representation or the investigation report of the inquiry committee, but also 'other relevant information'. The respondent alleged that the said "other relevant information" had never been communicated to him, and the appellants,

therefore, had committed a breach of procedural fairness when dismissing him. The respondent in the event applied for declarations *inter alia* that the second appellant's decision of 22 February 1991 herein was invalid and that he was still an employee of the first appellant. The learned judge rejected the appellants' contention that the phrase "together with other relevant information" was a mere surplusage, and in consequence gave an order in terms of the application. Dissatisfied, the appellants appealed

Held:
Per Abdul Malek Ahmad JCA

[1] Although the offending words "together with other relevant information" appear in the set format in the Guide for the Execution of Disciplinary Action of the Public Services Department, the fact remains that if the relevant authority was not relying on any other relevant information, it was certainly the second appellant's duty to delete the said words from the letter. Telling the employee only at the hearing at the High Court for this situation would not suffice.

[2] In any case, both the letters dated 10 January 1990 and 23 February 1991 informing the respondent that he was dismissed from service are by themselves void and of no effect as the wrong paragraph of General Order 36 of the 1980 General Orders had been referred to, namely paragraph (g) and not para. (i).

[3] The learned trial judge had acted on correct principles of law and there is no justification for this court to disturb his finding.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Responden telah diambil bekerja oleh perayu pertama sebagai jurugegas jentera. Dalam tahun 1989 dakwaan-dakwaan telah dibuat bahawa responden telah mencuri lima tangki petrol kepunyaan majikannya dan prosiding tatatertib telah dimulakan terhadap responden selaras dengan peruntukan-peruntukan Perintah-Perintah Am Pegawai Awam 1980 (Kelakuan dan Tatatertib) (Bab D) ("Perintah-Perintah Am 1980"). Hasil daripadanya, Lembaga Tatatertib, perayu kedua, mendapati responden bersalah atas tuduhan-tuduhan tersebut dan memecat responden daripada perkhidmatan melalui surat bertarikh 10 Januari 1990. Pemecatan tersebut telah dibuat di bawah Perintah Am 36(g) Perintah-Perintah Am, meskipun Perintah Am tersebut tidak berurusan dengan pemecatan tetapi dengan pengurangan gaji.

Kemudiannya, melalui surat bertarikh 7 Mac 1990 Lembaga Rayuan Tatatertib, perayu ketiga, mengenepikan perintah pemecatan tersebut dan memerintahkan siasatan tatatertib yang baru terhadap responden. Di siasatan yang berikutan, responden telah membuat representasi bertulis kepada Lembaga Tatatertib, tetapi meskipun demikian, Lembaga Tatatertib telah memutuskan responden bersalah atas tuduhan-tuduhan tersebut dan memecat beliau daripada perkhidmatan berkuatkuasa pada 22 Februari 1991, juga selaras dengan Perintah Am 36(g) dari Perintah-Perintah Am 1980.

Fakta menunjukkan bahawa Lembaga Tatatertib, dalam memecat responden bagi kali kedua, telah mempertimbangkan bukan sahaja representasi responden mahupun laporan penyiasatan jawatankuasa siasatan tetapi juga "maklumat relevan yang lain". Responden mendakwa bahawa perayu-perayu telah melakukan kemungkiran keadilan prosedural ketika memecat beliau, kerana "maklumat relevan yang lain" telah tidak disampaikan/dimaklumkan kepada beliau. Responden dalam keadaan itu, telah memohon untuk mendapatkan perisytiharan antara lainnya bahawa keputusan perayu kedua bertarikh 22 Februari 1991 di sini adalah tak sah dan bahawa beliau masih merupakan pekerja perayu pertama. Hakim yang bijaksana telah menolak penegasan perayu bahawa ungkapan "maklumat relevan yang lain" adalah hanya merupakan tambahan, dan akibatnya telah memberikan satu perintah seperti yang dipohon oleh permohonan. Berasa tidak puashati, perayu telah merayu.

Diputuskan
Oleh Abdul Malek Ahmad HMR

[1] Meskipun perkataan-perkataan yang menyalahi "bersama-sama dengan maklumat relevan yang lain" terdapat dalam bentuk tetap (set format) di dalam Garis panduan untuk Perlaksanaan Tindakan Tatatertib Jabatan Perkhidmatan Awam, hakikatnya kekal bahawa jika pihak berkuasa yang relevan tidak bergantung pada mana-mana maklumat lain yang relevan, ianya menjadi tugas perayu kedua untuk memotong atau memadamkan perkataan-perkataan tersebut daripada surat berkenaan. Memberitahu perayu bagi situasi ini hanya pada perbicaraan di Mahkamah Tinggi adalah tidak memadai.

[2] Walau apa pun, kedua-dua surat bertarikh 10 Januari 1990 dan 23 Februari 1991 yang memaklumkan responden bahawa beliau telah dipecat dari perkhidmatan adalah batal dan tidak berkesan kerana perenggan yang salah dari Perintah Am 36 dari Perintah-Perintah Am 1980 telah dirujuk, iaitu perenggan (g) dan bukannya perenggan (i).

[3] Hakim perbicaraan yang bijaksana telah bertindak atas prinsip-prinsip undang-undang yang betul dan tidak terdapat sebarang justifikasi bagi mahkamah ini mengganggu keputusan beliau.

[Rayuan ditolak.]

Case(s) referred to:

Board of Trustee of Maradona Mosque v. Badiuddin Mahmud & Anor [1967] AC 13 ***(refd)***

Chief Constable of North Wales Police v. Evans [1982] 3 All ER 142 ***(refd)***

Fairmont Investments Ltd v. Secretary of State for the Environment [1976] 1 WLR 1255 ***(refd)***

Mohd Najib Hj Ahmad v. Lembaga Padi dan Beras Negara [1998] 4 CLJ 405 ***(refd)***

R v. Deputy Industrial Injuries Commissioner, ex p Jones [1962] 2 QB 677 ***(refd)***

R v. Home Secretary, ex p Benwell [1985] 1 QB 544 ***(refd)***

R v. Smith [1844] 5 QB 614 ***(refd)***

Raja Abdul Malek Muzaffar Shah Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 CLJ 619 ***(refd)***

Ramachandra Gopalrao v. Deputy Inspector General of Police AIR [1957] Madh 126 ***(refd)***

Ridge v. Baldwin [1964] AC 40 ***(refd)***

S Nanjundeswar v. State of Mysore AIR [1960] SC 159 ***(refd)***

Shamsiah Ahmad Sham v. Public Services Commission, Malaysia & Anor [1991] 1 CLJ 23 ***(refd)***

Surinder Singh Kanda v. Government of the Federation of Malaya [1962] MLJ 169 ***(refd)***

Legislation referred to:

Federal Constitution, art. 135(2)

Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980, General Orders 26, 30, 36(g)

Public Services Disciplinary Board Regulations 1972, regs. 12(1), 13(1)

For the appellants - Tuan Hj Mohd Majid Hj Nazaran (Chen Fai Peng & Zaidah Haron with him); M/s Majid & Chen

For the respondent - S Muthu; M/s S Muthu & Co

[Appeal from High Court, Shah Alam; Civil Suit No: 22-522-1993]

Reported by WA Sharif

JUDGMENT

Abdul Malek Ahmad JCA:

The statement of agreed facts indicate that the respondent was at all material times an employee of the first appellant having started work with them on 16 July 1974 and having been confirmed in his post as an engine fitter on 1 February 1975. It is also not disputed that on the date of his dismissal on 22 February 1991, his monthly wages were RM720. What is disputed is that the termination was unlawful and that he should be reinstated to his previous position and be paid adequate compensation.

The statement of claim shows that the respondent had been discovered to be involved with theft of petrol belonging to his employer on more than one occasion. The first time was when on 1 June 1989, the respondent received the second appellant's letter dated 30 May 1989 stating that a report had been received as regards the arrest of the respondent for attempting to steal five tanks of petrol. The respondent was given seven days to explain in writing why he had behaved in that manner and why disciplinary action should not be taken against him.

The respondent replied by letter dated 2 June 1989. On 16 June 1989, the second appellant once again wrote to the respondent stating that another report had been received concerning the arrest of the respondent on 23 March 1989 between 8.45am and 9.10am at Jalan Subang Lama, Batu Tiga for attempting to steal three drums of petrol belonging to the first appellant. He was given seven days to explain his behaviour and why disciplinary action should not be taken against him. Two days earlier on 14 June 1989, the respondent had received a letter from the second appellant that he was interdicted from the exercise of his duty with effect from 15 June 1989 under General Order 30 of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 (hereinafter "the 1980 General Orders").

The respondent wrote to the second appellant on 15 June 1989 denying all the charges against him. By letter dated 10 January 1990, the second appellant had written to the respondent informing him that after careful consideration of the charges against him and the reply forwarded by him together with other relevant information available, the respondent had been found guilty and had been imposed with the punishment of a dismissal commencing on 8 January 1990 pursuant to General Order 36(g) of the 1980 General Orders. Although the letter actually referred to General Order 36(g), we find that this must surely be an error since para. (g) only deals with a reduction in salary while para. (i) is the paragraph that deals with a dismissal.

The respondent was given fourteen days under regs. 12(1) and 13(1) of the Public Services Disciplinary Board Regulations 1972 from the date of the receipt of the letter to appeal through his head of department to the third appellant which met on 19 February 1990. By letter dated 7 March 1990, the third appellant informed the respondent of their decision to set aside the order of dismissal made on 8 January 1990 and for the disciplinary action to be reheard.

The second appellant issued a notice to the respondent informing him of the charges against him for disciplinary action giving him the opportunity to make his representation in his defence pursuant to General Order 26 of the 1980 General Orders. The respondent made his written representation dated 25 April 1990.

On 23 February 1991, the second appellant informed the respondent of their decision made on 22 February 1991 to dismiss the respondent with effect from 22 February 1991 under General Order 36(g) of the 1980 General Orders having considered the report of their Investigation Committee and other relevant information. Again, we wish to point out that the relevant paragraph should have been para. (i) for dismissal as the punishment under para. (g) is a reduction in salary. Unhappy with this decision, the respondent appealed on 30 March 1991 but, by letter dated 18 July 1991, was informed that his appeal had been dismissed by the third appellant at its meeting on 15 July 1991.

Consequetly, the respondent filed an action against the appellants for the following orders:

(a) a declaration that the decision of the second appellant dated the 22nd February 1991 and of the third appellant dated the 15th July 1991 respectively are invalid and ought to be set aside;

(b) that the respondent be re-appointed as an employee of the first appellant;

(c) that the respondent be paid all arrears of salaries, EPF, SOCSO, bonuses, damages and all benefits due;

(d) damages;

(e) interest;

(f) costs; and

(g) such other relief as the court thinks fit.

The questions of law proposed by the respondent as plaintiff as regards the appellants as defendants were worded in the following manner:

> 1. Are the defendants entitled in law to conduct a second inquiry on the plaintiff based on similar facts in view of the fact that they found him not guilty of misconduct after the first inquiry.
>
> 2. The defendants when conducting the second inquiry did not observe "procedural fairness" when the plaintiff was not granted his constitutional right to be represented by a counsel of his choice.
>
> 3. The defendants considered irrelevant/other material information of which no notice was given to the plaintiff and hence there has been no procedural fairness.

At the trial, the respondent chose not to offer any evidence. The first two witnesses for the appellants were not cross examined. However, their third witness, under cross examination, confirmed that after the first inquiry, it had been found there was insufficient evidence and further investigation had been conducted for the second inquiry.

The learned High Court judge granted an order in terms of the respondent's prayers in the statement of claim and fixed another date to hear submissions on either reinstatement or damages. His reasons for the order granted were:

> As to the first question, the point is clearly answered by paragraph 10(i) of the Panduan Penyelenggaraan Tatatertib issued in 1980, which although it is not passed as a law or subsidiary legislation, nevertheless in the absence of any contrary interpretive authorities submitted by counsel, or adequately dealt with in submissions, is a sufficient authoritative statement of the disciplinary procedures for our current purpose. I answer this first question in the negative.
>
> As to the second question, the question had been answered in the decision of Mohd. Jemuri CJ (Borneo) in *Ghazi b Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 AMR 1257 SC. There is no mandatory requirement that there be an oral hearing or inquiry, where only then would the question of legal representation by a lawyer arise. There is nothing to prevent a lawyer to prepare the written representation to the disciplinary board for the plaintiff. See also *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & 2 Ors* [1995] 1 AMR 855 CA; *Teng Chang Khim v Suruhanjaya Pilihanraya, Malaysia* [1994] 2 MLJ 241. I therefore answer this second question in the negative.

The decision basically turns on the third question. The primary objection is that the disciplinary board considered irrelevant matters in making its decision as is evident from its letter to the plaintiff in conveying the decision.

Counsel for the defendants in his answer raised an issue that ought to be dealt with first: the objection that it was raised by surprise. In my view, the general wording of paragraphs 15 and 16 of the statement of claim is sufficient basis upon which the plaintiff's argument can be based. The reply in the statement of defence is likewise general in content. Paragraph 13 of the defence merely asserts that the decision was made after considering all information and evidence. I fail to understand how the surprise could arise: *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & 2 Ors* [1995] 1 AMR 855 CA is itself cited by counsel for the defendants in his submissions on the issue of procedural justice.

Despite the reasoning given for the first two questions, we were actually not quite sure what the learned High Court judge really meant when he said that he would answer the first two questions in the negative. The manner learned counsel for the appellants prepared the summary of their written submissions before us appear to imply that answering the first two questions in the negative meant that it was in their favour. From the reasons advanced, however, we would take it to mean that what the learned High Court judge really meant to say for the first question was that in view of the Guide for the Execution of Disciplinary Action issued by the Public Services Department, it was quite in order to conduct a second inquiry on the same facts. And as for the second question, he must have intended to say that there had been procedural fairness in the instant appeal by answering in the negative. However, since the crux of the appeal is only on the third question, we will not deal with the first two questions further.

As for the third question, the concluding paragraphs of the judgment of the learned High Court judge state:

The court must give meaning to the words as written in the letter issued by the defendants. The plaintiff is entitled to the belief the words are not mere surplusage. He is not in a position to say whether they are surplusage or not. If the words are mere surplusage, it is for the defendants to adduce evidence to that effect. The defendants have failed to do so. The defendants are therefore bound by the words of that letter to the plaintiff. The submission that the words were a repetition of the words in the form provided, in my view, is insufficient to displace the plain meaning of the words. Given that there had been a first inquiry which was ordered to be re-heard after an investigation by a committee, that the decision of the second inquiry is based, on the face of the letter of the 22nd February 1991,

on other evidence also in addition to the report of the investigation of the committee, leaves much to be desired in the way of procedural justice particularly where reputation, livelihood and pension of a person is involved.

I had therefore allowed the declaration as prayed in paragraph 17(a) of the statement of claim that the decision of the disciplinary board be set aside. I had offered the parties to return 23rd March 1998 for submissions either for reinstatement or damages.

As stated earlier, this appeal is confined only to the third question which is whether the appellants had committed breach of procedural fairness by taking into account "together with other relevant information" when dismissing the respondent when no such additional evidence was communicated to him. The said offending phrase is found in the second appellant's letter dated 23 February 1991 which is the very letter communicating the decision to dismiss the respondent.

The same point had actually been raised in the Supreme Court case of *Shamsiah bte Ahmad Sham v. Public Services Commission, Malaysia & Anor* [1991] 1 CLJ 23; [1990] 3 MLJ 364 where the core of the appellant's complaint was the fact that the Public Services Commission in arriving at its decision to dismiss her from service had taken into account extraneous matters namely the appellant's record of past conduct which were entered in her record of service and produced by the Director General of the Government Printers Department to the Public Services Commission without giving her an opportunity to explain, contradict or rebut them.

In that case, the appellant was a book-binder with the Government Printers Department and was dismissed by the Public Services Commission after she was found guilty of negligence and dereliction of duty. She subsequently applied to the High Court for a declaration that her dismissal was null and void and for other ancillary orders.

At the trial of the action, the appellant was the sole witness called to give evidence while the respondents called no witness. At the end of the trial, the High Court in a very short judgment found that the Commission in coming to its decision had not in any way acted *ultra vires* or *mala fides* and there was no evidence to suggest that the Commission was biased or prejudiced against the appellant. The learned judge was satisfied that the appellant's conduct was not satisfactory as she had several disciplinary actions taken against her in the past and that the Commission was entitled to take into consideration the appellant's previous conduct. Because she had failed to prove her case, the suit was dismissed.

It was held on appeal that the first respondent had infringed the rule of natural justice in not affording the appellant the opportunity to explain or controvert her record of service which played a part in influencing its decision to impose the severest punishment permissible under the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations 1969. On that ground and based on the authorities cited in the judgment, the court had no alternative but to allow the appeal referring and relying on *Ridge v. Baldwin* [1964] AC 40, *R v. Smith* [1844] 5 QB 614, *Surinder Singh Kanda v. Government of the Federation of Malaya* [1962] MLJ 169, *S Nanjundeswar v. State of Mysore* AIR [1960] SC 159, *R v. Home Secretary, ex parte Benwell* [1985] 1 QB 544, *Ramachandra Gopalrao v. Deputy Inspector General of Police* AIR [1957] Madh 126, *Chief Constable of North Wales Police v. Evans* [1982] 3 All ER 142, *Board of Trustee of Maradona Mosque v. Badiuddin Mahmud & Anor* [1967] AC 13, *R v. Deputy Industrial Injuries Commissioner, ex parte Jones* [1962] 2 QB 677 and *Fairmont Investments Ltd v. Secretary of State for the Environment* [1976] 1 WLR 1255.

The relevant passage from the Supreme Court judgment is relevant and is reproduced below:

> With all respect, the learned judge below should not have held that the first respondent was perfectly entitled to take into consideration the appellant's previous conduct without saying further that she must also be provided with an opportunity to explain or contradict them. The record of service as far as the disciplinary action before the first respondent was concerned contained extraneous matters, detrimental to the appellant's case ... What we are saying is that if these materials which have such damning effect on her case are to be used against her she should be given a right to be heard on them. It is not a matter of pure technicality but it is absolutely fundamental in law that the appellant should have been given an opportunity of stating her case regarding her past conduct, considering that the dismissal of a civil servant is no light matter.

The case of *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 CLJ 619; [1995] 1 MLJ 308 was an appeal from a decision dismissing the plaintiff's claim for a declaration that his dismissal from the police force was null and void. At the trial, the defendants submitted that there was no case to answer and elected not to call evidence. The plaintiff was an assistant superintendent with the Royal Malaysian Police Force when he was dismissed. On 16 December 1988, the secretary of the Police Services Commission, the first defendant, wrote to the plaintiff informing him of the Commission's decision to institute disciplinary proceedings against him on charges, *inter*

alia, of gross dereliction of duty and corruption. Each of the charges was carefully framed and particularised. The plaintiff responded giving a very full explanation of the allegations made against him and requested for an oral hearing as well as for certain documents which were later supplied to him. The plaintiff then made a further written response. No oral hearing was held and by a letter of 4 April 1990, the first defendant informed the plaintiff of the commission's decision to dismiss him after considering the plaintiff's explanations in his two letters, and other information.

In that appeal, the plaintiff submitted that the defendants were under a duty to act fairly, which included the obligation to give him an oral hearing. The failure to do this had deprived the plaintiff on his right to be heard which is enshrined in art. 135(2) of the Federal Constitution. The plaintiff alternatively submitted that the defendant had taken into account material information which had never been put to the plaintiff and without giving him the opportunity to comment on it. The defendants argued that the words 'and other information' in the letter of 4 April 1990 were mere surplusage and should be ignored, the subject matter of the plaintiff's alternative submission was not sufficiently pleaded in his statement of claim, and the plaintiff's complaint was without merit because he had readily agreed under cross-examination that he had the opportunity to rebut the allegations made against him.

It was held, among other things, in allowing the appeal and ordering the plaintiff's reinstatement that:

(a) The words 'and other information' in the letter of 4th April 1990 left a reasonable man with the distinct impression that the defendants had considered material information that was never put to the plaintiff. A fair procedure includes the duty of an arbiter not to take into account matters that have not been first put to the accused with an opportunity for him to rebut them.

(b) The defendants could have explained the words used but opted not to call evidence. For the court to imply that the words uttered in such an important context were mere surplusage was to exceed the limits of judicial function. The trial judge appeared not to have addressed his mind to this, and it was a serious misdirection which had occasioned a miscarriage of justice.

The relevant extract of the judgment by Gopal Sri Ram JCA on behalf of this court reads:

> The letter when read as a whole and the words that I have emboldened and underlined, when read in the light of all the surrounding circumstances, would leave a reasonable man with the distinct impression that the defendants considered and gave weight to certain material information that was never put to the plaintiff. Of course, it was always open to the defendants to have given a full explanation as to what was meant by that critical phrase. For example, it might have been explained away as mere surplusage, having no meaning. It would then have behoved the Judge to decide whether to accept such an explanation. But the defendants took the option of remaining silent: and all that I am left with are the printed words: and they mean what they say. To imply that words uttered in such an important context, especially in a case that has to do with the deprivation of a man's livelihood and reputation, are mere surplusage is to exceed the limits of the judicial function.

More recently, this court in *Mohd Najib bin Hj Ahmad v. Lembaga Padi dan Beras Negara* [1998] 4 CLJ 405; [1998] 4 MLJ 425 had the occasion to deal with the same point. The appellant was employed by the respondent as an Assistant Enforcement Director in 1972. He held the position of Assistant Director of Training when he was dismissed. Disciplinary proceedings were commenced against the appellant by way of a letter from the respondent's disciplinary committee to show cause why disciplinary action should not be taken against him following investigations carried out by the committee in respect of four complaints received against him. The committee decided that the charges were made out and imposed punishments on the appellant pursuant to the 1980 General Orders. The appellant appealed to the respondent but the appeal was dismissed and the punishments were substituted with dismissal from service. The appellant then filed his suit. At the trial, he was the only one giving evidence. The trial judge dismissed the appellant's claim and the appellant appealed. The appellant attacked the trial judge's findings that the appellant had called no witness to testify on his behalf and that the appellant could not contend that the respondent had no authority to take any disciplinary action against him under the 1980 General Orders as no averment was made in the appellant's amended statement of claim as to his reliance on the said General Orders. The appellant also submitted that there had been a denial of the doctrine of substantive fairness in proceedings before the committee when it took into account matters of which the appellant had no notice of and for which he had no opportunity to reply.

It was held, in allowing the appeal, that:

(a) the fact that the oral evidence came from the appellant himself and not from any other third party called on his behalf did not entitle the judge to conclude that the appellant called no witness whatsoever as he was as much a witness as any other person called to testify on his behalf;

(b) the omission to aver to the 1980 General Orders in the amended statement of claim was a non-issue as both parties were aware that the dispute over the appellant's dismissal stemmed from proceedings under the provisions of the 1980 General Orders;

(c) the respondent had every opportunity to explain what other relevant information was considered by the committee at the trial but they opted to remain silent. The words 'other relevant information' in its letter to the appellant must mean that extraneous material had been taken into account without giving the appellant the opportunity to comment or rebut. The trial judge had not directed her mind to that aspect of the case and this omission was a misdirection which had occasioned a miscarriage of justice.

In the instant appeal, the respondent did not offer any evidence at all unlike *Najib's* case *(supra)* where the plaintiff gave evidence but did not call any witnesses. No adverse comment on this had been raised by the appellants in this appeal and so this is not actually an issue but we would like to reiterate that there was actually no necessity for evidence to be taken in the first place since the documents available abundantly spoke for themselves.

Learned counsel for the appellants here had submitted that the question is whether the learned trial judge had erred in arriving at the finding when the appellants had led evidence in chief to the effect that the offending phrase namely "together with other relevant information" was mere surplusage and did not denote or otherwise imply the existence of such alleged additional information. Learned counsel had also, during submissions, explained that the offending phrase was adopted in toto by the second appellant from the Guide for the Execution of Disciplinary Action of the Public Services Department. He argued that the usage of the offending phrase had, therefore, been reasonably explained and cannot be a basis for the learned trial judge to draw other negative inferences.

He further stated that the learned judge in arriving at the said decision appeared to rely entirely on the case of *Raja Abdul Malek (supra)*. He submitted that the facts of that case was distinguishable in that the respondents in that case had chosen to remain silent, that is, by not offering any evidence to explain why the offending phrase was used while in the present case, the appellants had clearly led uncontroverted evidence to the effect that no other information was used in arriving at the decision other than which the appellants had communicated to the respondent.

His final submission was that the appellate courts are empowered and ought to interfere with the finding of fact when the trial judge had manifestly erred in evaluating the evidence of witnesses. In the present case, he added, the learned judge had clearly erred by ignoring the clear and uncontroverted evidence of the appellants when the respondent had not offered any evidence to the contrary.

We are conscious that the offending words "together with other relevant information" appear in the set format in the Guide for the Execution of Disciplinary Action of the Public Services Department but we would have thought that if the relevant authority was not relying on any other relevant information, it was certainly their duty to delete the said words from the letter. Telling the employee only at the hearing at the High Court of this situation would not, in our view, suffice as no details of the other relevant information available or the fact that they were not relying on it at all had been communicated to the respondent before the dismissal had become effective.

As we have stated earlier, both the letters dated 10 January 1990 and 23 February 1991 informing the respondent that he was dismissed from service are by themselves void and of no effect as the wrong paragraph of General Order 36 of the 1980 General Orders had been referred to namely para. (g) and not para. (i).

Based on the authorities cited, we did not even require any reply from the respondent. We unanimously agreed that the learned trial judge had, for the third question, acted on the correct principles and there is no justification for us to disturb his finding. We had accordingly dismissed the appeal with costs to be agreed and ordered that the deposit is to go to the respondent to account of the agreed costs. We also ordered the same High Court judge to determine the consequential orders.